

Remarks/Arguments

Applicant would like to thank the Examiner for the careful consideration given the present application. The application has been carefully reviewed in light of the Office action. Favorable reconsideration of the application is respectfully requested in view of the comments made herein.

Claims 9-11 were rejected under 35 U.S.C. 112, first paragraph. These claims have been canceled herein. Accordingly, withdrawal of this rejection is respectfully requested.

Claims 1-6 were rejected under 35 U.S.C. 102(b) as being anticipated by Teele (U.S. 4,601,295), or in the alternative as obvious based on Teele et al. in view of Wong et al. (U.S. 4,691,714). Traversal of this rejection is made for at least the following reasons. Claims 1 and 4 require that a determination be made as to whether the fluid present in the ear is serous, purulent or mucoid. There is nothing in Teele that discloses, teaches, or suggests determining a type or viscosity of fluid present in the ear. Instead, Teele is only concerned with determining whether fluid, generally, is present. In other words, Teele makes a yes or no determination – either fluid is present or it is not.

Regarding the proposed combination of Teele and Wong, it is submitted that there is nothing present within the references that would have suggested to one skilled in the art to modify the device of Teele to determine viscosity. As taught in Teele, it was good enough to merely determine whether any fluid is present in the middle ear. Teele is silent regarding the measurement of viscosity and whether that would have any impact in diagnosing middle ear effusion. Thus, one would not have looked to Wong, which is directed to determining changes in the properties of cervical mucus at the onset of ovulation, to modify the device of Teele, which determines whether fluid in the middle ear is present.

For at least the reasons discussed above claims 1 and 4 are believed to be allowable. Claims 2-3 and 5-6 have been canceled herein.

Claims 12-13 were rejected under 35 U.S.C. 103(a) as being unpatentable over Teele et al. alone or further in view of Wong et al. Traversal of this rejection is made for at least the following reasons. Teele does not disclose, teach, or suggest determining effusion viscosity and comparing it with at least one predetermined fluid viscosity value. Instead, Teele merely determines whether fluid is or is not present within the middle ear. More specifically, Teele

makes this determination by looking for a pronounced dip in the magnitude of the vector sum at a frequency associated with quarter wave resonance. No comparison with predetermined viscosity values are made in Teele. As stated above, one skilled in the art would not have been motivated by a reference directed to determining changes in cervical mucus at the onset of ovulation to modify a reference which uses the aforementioned dip in magnitude as a diagnostic tool for middle ear effusion. For at least these reasons, withdrawal of the present rejection is respectfully requested.

Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Alvord (Jrnl Amer. Academy of Audiology V1 No.4 (1990), of record). Traversal of this rejection is made for at least the following reasons. Alvord fails to disclose, teach, or suggest determining whether fluid present in the ear is serous, purulent, or mucoid. Instead, Alvord is merely directed to determining the presence or non-presence of fluid. Because at least one limitation is missing from Alvord, Alvord cannot anticipate or render claims 1 and 4 obvious. Withdrawal of this rejection is respectfully requested.

Claims 7-8 and 12 were rejected under 35 U.S.C. 103(a) as being unpatentable over Hormann (Abstr. Acta Otolaryngol. Suppl. 1987; 440:1-59) and Teele et al. Traversal of this rejection is made for at least the following reasons. Hormann fails to disclose how to measure the viscosity of middle ear effusions. While Teele discloses a reflection analyzer to determine the presence of fluid, the device disclosed in Teele is not capable of determining viscosity, as discussed in Hormann. Accordingly, one skilled in the art would not have looked to Teele to measure viscosity of middle ear effusions, as discussed in Hormann. Withdrawal of this rejection is respectfully requested.

Claim 9 was rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 8 above, and further in view of Brainard et al. (U.S. 6,048,320). Claim 9 has been canceled herein. Withdrawal of this rejection is requested.

In light of the foregoing, it is respectfully submitted that the present application is in condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. 34968US2.

Respectfully submitted,
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